

**Subject:** RE: BCDC Enforcement Case No. ER2016.017 NCRA at Black Point Bridge, Novato, Marin County  
**Date:** Tuesday, May 16, 2017 at 2:50:09 PM Pacific Daylight Time  
**From:** David Anderson  
**To:** Klein, Adrienne@BCDC  
**CC:** mitch.stogner@northcoastrailroad.org

Adrienne,

Thank you for your persistence yesterday to understand the entities in the background on this issue. I thought I would recap the players:

SMART, fee owner of the property,

NCRA, holder of a perpetual easement for freight operations,

NWP Company, NCRA's private freight operator, and

ARE Incorporated, serves as NCRA's consultant providing project management and engineering services.

In principal, we agreed yesterday that the ideal solution of the driveway washout is to remove the driveway.

Based on my discussions with SMART, the owner of the property, they desire to remove the abandoned bridge operator's house as well as the subject driveway. They see the abandoned property as a liability. One of the hurdles of removing the house was a resident who was a relative of the operator who lived in the house after the operator's death. SMART was made aware, about 3 months ago, that the deceased operator's brother has also passed. There is also a potential hurdle we did not discussed yesterday. There is a waterline buried in the drive. This will need to be relocated. I will look into this and determine ownership and what would need to be done to move. We might get lucky to find that it only servers the operator's house and can just be removed.

I will arrange a meeting with SMART as soon as possible. With the purpose to gain better understanding of SMART's process regarding this matter and obtain a timeline for removal. After we have a frim understanding of SMART's intentions we will set up a meeting with you.

If we are able to get a meeting soon with SMART we might we be able to meet with you by the end of May before you leave for the month of June. Otherwise, we will plan to meet in July after you return.

In closing, I want to again stress that it is my belief removal of the driveway and the existing culvert is the best solution to address the current effects of the driveway. To just remove the "gravel Noel" that currently exists may end up causing erosion and large amounts of turbidity because of the turbulence at the mouth of the culvert. And, we would still be subject to continued washouts as a result of future storms and high tides. Left "as is" natural events will in time remove the driveway in an uncontrolled way. It is also my belief that the current situation is somewhat stable for the time being.

Dave



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associated with the vacant house.

This idea was generally discussed with BCDC and it was my read that it was seen as a win-win. BCDC came back and said we still need to get a permit for the work that was done and subsequently removed by the second storm, and we would need to retrieve material washed into the stream east of the drive. We responded stating that environmentally, it might be better to do the removal at the time of the driveway removal. In addition, it would be difficult to determine the limits of the removal of material.

NCRA is currently waiting for some direction from SMART, the property owner, as to what they plan to do with the operator house and driveway.

Look forward to coming to a resolution of this matter.  
Dave

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**From:** David Anderson  
**Sent:** Monday, May 15, 2017 4:12 PM  
**To:** 'Klein, Adrienne@BCDC' <[adrienne.klein@bcdcc.ca.gov](mailto:adrienne.klein@bcdcc.ca.gov)>  
**Cc:** 'mitch.stogner@northcoastrailroad.org' <[mitch.stogner@northcoastrailroad.org](mailto:mitch.stogner@northcoastrailroad.org)>  
**Subject:** FW: BCDC Enforcement Case No. ER2016.017 NCRA at Black Point Bridge, Novato, Marin County

Adrienne,

My concern with removing any material is the large amount of turbulence immediately downstream of the culvert. If we remove material in this area there would be major disturbance of the stream bottom, this combined with the turbulent flow from the culvert would cause extensive turbidity and erosion. Also, another concern, over the last 100 years there has been without doubt many other occurrences of this road being overtopped by major storms with high tides that have caused road material washouts to one degree or another. It would be difficult to determine a limit of removal.

SMART, the owner of the property, is considering complete removal of the road and old operator house. If any downstream gravel where to be removed that would be the time for its removal. The existing turbulent flow from the existing culvert would be removed eliminating the concern for erosion and turbidity. This potential project could have an overall positive impact to the wetlands in this area. Please review one of my earlier emails that includes a google map showing the setting of the old operator house and drive.

Also, attached please see the survey and preliminary grading plan that was created to bring the roadway drainage pattern to a more historical grade. NCRA would like to visit BCDC next week or soon thereafter to better understand what it is that needs to be done and how. Please let me know if this can be arranged. Will bring a movie of the turbulent flow.

Dave

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**From:** Klein, Adrienne@BCDC [<mailto:adrienne.klein@bcdcc.ca.gov>]  
**Sent:** Wednesday, April 19, 2017 3:10 PM  
**To:** David Anderson <[DAnderson@are-corp.com](mailto:DAnderson@are-corp.com)>  
**Cc:** [ncra.mstogner@sbcglobal.net](mailto:ncra.mstogner@sbcglobal.net); Douglas H. Bosco <[dbosco@boscolaw.com](mailto:dbosco@boscolaw.com)>; [nwpmike@outlook.com](mailto:nwpmike@outlook.com); McCrea, Brad@BCDC <[brad.mccrea@bcdcc.ca.gov](mailto:brad.mccrea@bcdcc.ca.gov)>  
**Subject:** Re: BCDC Enforcement Case No. ER2016.017 NCRA at Black Point Bridge, Novato, Marin County

Dear Dave,

A few weeks ago, I conferred with the Chief of Permits and other regulatory staff members during a weekly staff meeting. As suggested in my note to you on March 28th, we concurred that the wash out does not relieve you of the obligation to apply for permission to authorize this work. You also have the option to remove all unauthorized work, as outlined in the letters dated May 23 and July 12, 2016.

As a result of the wash out, a new issue has arisen that you must address: I suspect that the tidal channel east of the road that crosses it is now full of gravel, which serves no beneficial purpose and is likely causing adverse impacts to the habitat. Therefore, NCRA must remove the gravel from the channel pursuant to a BCDC-staff approved fill removal plan because it is not eligible for retroactive approval. Please develop and submit a fill removal plan that avoids or minimizes adverse habitat impacts for our consideration.

In your email dated August 22, 2016, you stated that you had completed a survey and were working on a plan. However, you have not provided BCDC with a copy of either of these documents nor an application. Please immediately submit a fileable application and/or a fill removal plan (for all or a portion of the unauthorized work).

As of May 28, 2017, you will be liable for standardized fines of \$30,000. If you fail to resolve this matter by May 28, 2107, you may forfeit your opportunity to resolve the violation using standardized fines and we may commence a formal enforcement proceeding that could lead to the issuance of a cease and desist and civil penalty order.

Sincerely,

Adrienne

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Adrienne Klein  
Chief of Enforcement  
SF BCDC  
455 Golden Gate Ave., Suite 10600  
San Francisco, CA 94102-7019  
Direct: (415) 352-3609  
Main: (415) 352-3600  
<http://www.bcdc.ca.gov>

Please identify the appropriate BCDC permit and enforcement case file numbers in the subject line of your response.

cc: Brad McCrea, Director, Regulatory Program

**From:** David Anderson <[DAnderson@are-corp.com](mailto:DAnderson@are-corp.com)>

**Date:** Wednesday, March 29, 2017 at 10:17 AM

**To:** Adrienne Klein <[adrienne.klein@bcdcc.ca.gov](mailto:adrienne.klein@bcdcc.ca.gov)>

**Cc:** "[ncra.mstogner@sbcglobal.net](mailto:ncra.mstogner@sbcglobal.net)" <[ncra.mstogner@sbcglobal.net](mailto:ncra.mstogner@sbcglobal.net)>, "Douglas H. Bosco" <[dbosco@boscolaw.com](mailto:dbosco@boscolaw.com)>, "[nwpmike@outlook.com](mailto:nwpmike@outlook.com)" <[nwpmike@outlook.com](mailto:nwpmike@outlook.com)>

**Subject:** RE: BCDC Enforcement Case No. ER2016.017 NCRA at Black Point Bridge, Novato, Marin County

Hi Adrienne,

Ok will wait to hear from you. The wall components that were installed as part of the repair were replacements of the original headwall design that were removed by the high water. The repair did add an additional higher timber. That timber and others were removed with the latest high water. They all floated inland and have been removed from the site.

Dave

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**From:** Klein, Adrienne@BCDC [<mailto:adrienne.klein@bcdcc.ca.gov>]

**Sent:** Tuesday, March 28, 2017 6:24 PM

**To:** David Anderson <[DAnderson@are-corp.com](mailto:DAnderson@are-corp.com)>

**Cc:** [ncra.mstogner@sbcglobal.net](mailto:ncra.mstogner@sbcglobal.net); Douglas H. Bosco <[dbosco@boscolaw.com](mailto:dbosco@boscolaw.com)>; [nwpmike@outlook.com](mailto:nwpmike@outlook.com)

**Subject:** Re: BCDC Enforcement Case No. ER2016.017 NCRA at Black Point Bridge, Novato, Marin County

Hi Dave,

Many thanks for your email to which I will reply formally as soon as I have a chance to confer with colleagues on your position that no permit is now required since the road washed out and isn't planned for further repair. I don't believe this negates that fact that an unauthorized repair occurred and, therefore, it is my believe that the work, including the vertical wall, which is still very much in tact, still needs retroactive approval.

Good work finding the permit for the automation. We don't have our regionwides in our GIS database.

Adrienne

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**From:** David Anderson <[DAnderson@are-corp.com](mailto:DAnderson@are-corp.com)>

**Date:** Monday, February 20, 2017 at 3:41 PM

**To:** Adrienne Klein <[adrienne.klein@bcdcc.ca.gov](mailto:adrienne.klein@bcdcc.ca.gov)>

**Cc:** "[ncra.mstogner@sbcglobal.net](mailto:ncra.mstogner@sbcglobal.net)" <[ncra.mstogner@sbcglobal.net](mailto:ncra.mstogner@sbcglobal.net)>, "Douglas H. Bosco" <[dbosco@boscolaw.com](mailto:dbosco@boscolaw.com)>, "[nwpmike@outlook.com](mailto:nwpmike@outlook.com)" <[nwpmike@outlook.com](mailto:nwpmike@outlook.com)>

**Subject:** RE: BCDC Enforcement Case No. ER2016.017 NCRA at Black Point Bridge, Novato, Marin County

Adrienne,

The attached photos highlight the current washouts that removed Harbor Drive headwall and the fill that was placed as an emergency repair. The roadway is now closed and no repairs are planned.

The road was required in the past to provide access to the bridge operator's house located at the west end of the bridge on the north side of the tracks. The house has recently been vacated after the death of the late operators younger brother who was living in the house. The railroad property including the bridge

operator house is owned by SMART. SMART is now investigating the removal of the house and the access road. At this point nothing is planned for the roadway repair until SMART makes a determination if the road will be removed. The attached screenshot below highlights the location of the house that the road served:



I believe the main issue that the local residents have with Harbor Drive is its possible impact to the erosion that is currently directly adjacent to their property line. I was recently approach by a very upset property owner and he wants a concrete wall along the property line. To address the current property owners the removal of the road would not resolve the issue. It would seem a new channel needs to be cut north of the existing regardless what is done with the road.

Have also attached the BCDC permit for Black Point Bridge. When NCRA hears from SMART on their plan we will update you.

Dave



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**From:** Klein, Adrienne@BCDC [<mailto:adrienne.klein@bcdc.ca.gov>]  
**Sent:** Monday, August 22, 2016 7:34 PM  
**To:** David Anderson <[DAnderson@are-corp.com](mailto:DAnderson@are-corp.com)>  
**Cc:** [ncra.mstogner@sbcglobal.net](mailto:ncra.mstogner@sbcglobal.net)  
**Subject:** Re: BCDC Enforcement Case No. ER2016.017 NCRA at Black Point Bridge, Novato, Marin County

Dear Dave,

Thanks for the progress update. We look forward to receiving an application ASAP upon compiling the information needed to assess the work undertaken.

Sincerely,

Adrienne

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Adrienne Klein  
Chief of Enforcement  
SF BCDC  
455 Golden Gate Ave., Suite 10600  
San Francisco, CA 94102-7019  
Direct: (415) 352-3609  
Main: (415) 352-3600  
<http://www.bcdc.ca.gov>

Please identify the appropriate BCDC permit and enforcement case file numbers in the subject line of your response.

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**From:** David Anderson <[DAnderson@are-corp.com](mailto:DAnderson@are-corp.com)>  
**Date:** Monday, August 22, 2016 at 12:58 PM  
**To:** Adrienne Klein <[adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov)>  
**Cc:** "[ncra.mstogner@sbcglobal.net](mailto:ncra.mstogner@sbcglobal.net)" <[ncra.mstogner@sbcglobal.net](mailto:ncra.mstogner@sbcglobal.net)>  
**Subject:** RE: BCDC Enforcement Case No. ER2016.017 NCRA at Black Point Bridge, Novato, Marin County

Adrienne,

As way of an update, we have completed the survey of Harbor Drive at Black Point. Currently completing a plan of the area. Attached are some photos taken on the morning of the survey. The top of the culvert was visible and we placed the survey rod on the top of the culvert and got its elevation. The tide was going out at the time of survey and the culvert was functioning. The areas of the roadway that were inundated during high tide were very visible.

It was clear that the roadway fill was high near the timber headwall. We should have the roadway contours and elevations soon. We will come up with a grading plan for your review. Once we have the plan I will be meeting with a wetlands specialist, Lucy Macmillan, to review the overall area and our plan. Once the plan is approved by BCDC we will implement.

The Black Point Bridge Automation pipe you referred to in your letter extends a few feet below water a low tide and terminates. When we described the project we did not consider this as work in the water. This bridge has always had underwater cables from the timber approaches to the center pier. The automation work is being completed at the top of the center pier and in the bridge operator house located above the tracks. All materials for the project are delivered to the bridge via rail. There is no construction in the water.

Dave



David R. Anderson, PE | **President/CEO**  
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**From:** Klein, Adrienne@BCDC [<mailto:adrienne.klein@bcdcc.ca.gov>]  
**Sent:** Wednesday, July 27, 2016 3:51 PM  
**To:** David Anderson <[DAnderson@are-corp.com](mailto:DAnderson@are-corp.com)>  
**Subject:** Automatic reply: BCDC Enforcement Case No. ER2016.017 NCRA at Black Point Bridge, Novato, Marin County

I will not be available between July 25 and 29, 2016 and will respond to your email between August 1 and 5, 2016.

To reach someone in my absence, please call the front desk at 415-352-3600.

Sincerely,

Adrienne Klein